

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-206879

DATE: October 29, 1982

MATTER OF: Compressor Engineering Corporation

DIGEST:

Agency properly restricted procurement of spare air compressor parts to original equipment manufacturer's parts since agency lacked detailed original equipment manufacturer's drawings, only original equipment manufacturer's parts had been adequately tested, and qualification of alternate parts offered by protester cannot be completed until standardized performance criteria are developed. Agency is currently in the process of developing testing procedures.

Compressor Engineering Corporation (CECO) protests against award of a contract by the Defense Construction Supply Center (DCSC) to Ingersoll-Rand Company under solicitation No. DLA700-81-R-3966 for the supply of 29 cylinder sleeves for use in low pressure air compressors installed on various Navy combat ships.

CECO charges that award was made to Ingersoll-Rand even though its offered price was higher than CECO's offered price, because DCSC rejected CECO's offer on the basis that CECO was not an approved source for the compressor parts being purchased. CECO alleges that its cylinder sleeves were supplied to DCSC under a previous contract, that it was listed as a qualified source for this particular product, and that award to it, therefore, was mandated.

We deny the protest.

The solicitation was issued on September 30, 1981, to six potential suppliers. Offers were received from Ingersoll-Rand and CECO only at a per unit price of \$1,195 and \$1,085, respectively. The solicitation's supply schedule stated that cylinder sleeves were to be manufactured by Ingersoll-Rand and identified Ingersoll-Rand

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part No. H32699A. However, CECO's offer indicated that the cylinder sleeves it offered would be manufactured at CECO's production facility and would be CECO parts rather than Ingersoll-Rand parts. Because CECO offered an alternate part and because the Navy's engineering support activity notified the contracting officer that it would take more than 90 days to properly evaluate CECO's cylinder sleeves, the contracting officer rejected CECO's offer as unacceptable for this procurement. Award was made to Ingersoll-Rand on January 28, 1982.

CECO argues that its cylinder sleeves were evaluated and approved by the proper engineering support activity, the Navy Weapons Support Center in Crane, Indiana (NWSC Crane), in May 1980. Based upon this evaluation, CECO alleges that it was approved as a source for these cylinder sleeves for any future procurements. Furthermore, CECO points out that it supplied cylinder sleeves for use by the Navy under a contract with DCSC and that it received no deficiency reports or complaints concerning performance of its parts in the shipboard environment.

The Defense Logistics Agency (DLA) initially reported to our Office that CECO was approved as a source for cylinder sleeves by NWSC Crane but that the approval was revoked by the Naval Sea Systems Command (NAVSEA), which replaced NWSC Crane as the Navy's recognized engineering support activity. In a later submission to our Office, DLA reported that CECO had only been approved as a source for cylinder sleeves for one particular procurement; the approval was not good for future procurements and, therefore, CECO was not considered an approved source for the present procurement and was rejected.

At the time of CECO's approval in May 1980, NWSC Crane was the Navy's recognized engineering support activity. The Navy reported to DLA that NWSC Crane approved CECO as a source for cylinder sleeves solely on the basis of a "dimensional comparison to a sample item drawn from stock" without any operational testing. The Navy also indicated that it had been experiencing an excessively high failure rate in its shipboard compressors which are essential to the ships' missions. During this period, NAVSEA removed NWSC Crane as the recognized engineering support activity and appointed itself in NWSC Crane's place. NAVSEA decided, in view of

the high compressor failure rate, to review its system for approving suppliers for compressor parts. As part of this review, NAVSEA initiated a quality control program in which the Dayton T. Brown Engineering and Test Division reevaluated certain previously approved compressor parts which were considered critical by the Navy. A part made by CECO--a low pressure compression ring--was reevaluated and found to be defective. According to the Navy, this part had originally been subjected to the same testing procedure by NWSC Crane as had the cylinder sleeves which are the subject of this protest--that is, both parts had been approved using reverse engineering techniques based on a visual inspection of a sample part and no operational tests were performed on either. As a result of NAVSEA's review of the method used by NWSC Crane to approve CECO's parts and because of the defect found in CECO's low pressure compression ring, NAVSEA asked DCSC to stop issuing this material to the Navy.

On December 21, 1981, DCSC requested that NAVSEA reevaluate the protester's part. NAVSEA officials met with CECO's representatives on January 20, 1982, to discuss requalification of CECO as a source for critical compressor parts. As a result, CECO is to supply documentation and/or sample parts for further evaluation. NAVSEA is currently in the process of developing performance criteria to evaluate compressor parts from other than the original equipment manufacturers.

The Defense Acquisition Regulation (DAR) § 1-313 (1976 ed.) permits the procurement of spare parts on a restricted basis in appropriate circumstances. However, the validity of any procedure which limits the extent of competition depends upon whether the restriction serves a bona fide need of the Government. Such restrictions include those essential to assure procurement of a satisfactory end product or to determine the high level of quality and reliability assurance necessitated by the criticality of the product. Department of Agriculture's Use of Master Agreement, 54 Comp. Gen. 606, 609 (1975), 75-1 CPD 40. Basic characteristics of approved, although restrictive, procedures are that they function so that (1) no firm which is able to provide a satisfactory product is necessarily precluded from competing on procurements of that item; and (2) a firm may become eligible to compete at any time it demonstrates under

suitable procedures that it is able to furnish an acceptable item which meets the Government's needs. Department of Agriculture's Use of Master Agreement, supra, at 609.

Thus, while DAR § 1-313(c) allows a procuring activity to solicit only approved suppliers, it does not preclude the submission and consideration of proposals from unapproved sources which can otherwise qualify their products under suitable testing procedures. See Metal Art, Inc., B-192579, April 3, 1979, 79-1 CPD 229. Moreover, our Office has consistently taken the position that agencies must give alternate producers an opportunity to qualify when procuring replacement parts pursuant to DAR § 1-313(c). See Parker Hannifin Corporation, B-199937, October 2, 1981, 81-2 CPD 270.

In the present case, there is a dispute as to whether NWSC Crane had the original equipment manufacturer's engineering drawings at the time it approved CECO's parts. The protester contends that NWSC Crane had the drawings and, therefore, should have done more than just visually examine CECO's cylinder sleeves before granting CECO its approval. DLA contends that NWSC Crane had the drawings but that the dimensions stated in those drawings were only approximate. Moreover, DLA argues that, even if an alternate part had dimensions identical to those of an original equipment manufacturer's drawings, there might yet be differences in the products because of materials or manufacturing processes used. Accordingly, regardless of whether NWSC Crane had the drawings, DLA argues that operational testing is a permissible prerequisite to being listed as an approved source.

We find no basis for sustaining CECO's protest and upsetting the award to Ingersoll-Rand. Regardless of whether NWSC Crane had Ingersoll-Rand's drawings and whether those drawings were accurate, the fact remains that NWSC Crane had only approved CECO's cylinder sleeves on the basis of visual examination while Ingersoll-Rand's parts had undergone 2,000 hours of operational testing. The Navy determined that something was wrong with NWSC Crane's approval procedures, especially in view of the high number of compressor breakdowns in the shipboard environment. NAVSEA determined that some form of performance testing

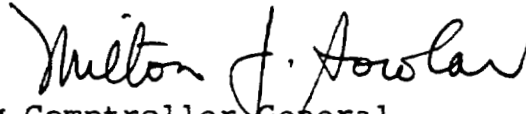
would be necessary before any alternate parts would be approved for use. Moreover, the part in question was described as a "critical application item" in the solicitation and is considered essential to the sustained performance of compressors which are essential to fulfilling ships' missions. While CECO was an approved source at one time, the record shows that such approval was only made for that particular procurement for which CECO was awarded a contract. In light of the high incidence of compressor failure and the criticality of the air compressors to the Navy's mission, we cannot find the testing requirement to be unreasonable. See 52 Comp. Gen. 546, 548 (1973).

We believe that DCSC and the Navy acted properly in limiting this procurement to firms supplying Ingersoll-Rand parts, since the Navy lacked fully adequate data or sufficient test results to conduct the procurement on an unrestricted basis to assure the requisite reliability and interchangeability of parts. See DAR § 1-313(c). Although CECO contends that NWSC Crane did have fully accurate Ingersoll-Rand drawings, this charge has been disputed by DLA.

Because we have only the contrary assertions of the protester and the agency to go by, we conclude that CECO has failed to prove its allegation. Stevens Air Systems, Inc., B-192694, April 2, 1979, 79-1 CPD 224; Fil-Coil Company, Inc., B-198105, October 21, 1980, 80-2 CPD 304. We are convinced that the Navy did not have full and adequate data (especially in this background of repeated compressor failure) to enable it to permit unrestricted procurement of these parts without performance testing of an offeror's alternate parts to the same extent as the original equipment manufacturer's parts have been tested.

Since standardized performance testing criteria have yet to be developed and the Navy cannot reevaluate CECO's part until such criteria are developed, we cannot hold the contracting officer's rejection of CECO's offer to be improper. In this regard, we note that the Navy is apparently attempting in good faith to develop adequate

testing procedures and we trust that CECO will be given an opportunity to requalify its parts for approval thereunder. Compare Metal Art, supra.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States